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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/589,378

08/14/2006

Daniel J. Arriola

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109 7590 03/30/2010

The Dow Chemical Company  
Intellectual Property Section  
P.O. Box 1967  
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EXAMINER

RABAGO, ROBERTO

ART UNIT

PAPER NUMBER

1796

MAIL DATE

DELIVERY MODE

03/30/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/589,378	<b>Applicant(s)</b> ARRIOLA ET AL.	
	<b>Examiner</b> Roberto Rábago	<b>Art Unit</b> 1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 02 March 2010.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) 3-14 and 20-30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 15-17 is/are rejected.
- 7) ☒ Claim(s) 18 and 19 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 August 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)                        | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election without traverse of Group I, claims 1, 2 and 15-19 in the reply filed on 3/2/2010 is acknowledged.

### ***Claim Objections***

2. The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not). When a claim is canceled, the canceled claim may not be reinstated, except as a new claim with a new claim number.

Applicants were advised in the Office action mailed 2/3/2010 that the original claim set included 30 claims, and therefore the claims should be renumbered, wherein the second claim numbered 22, through claim 29, should be renumbered as 23-30 to comply with the rule and to properly indicate that a total of 30 claims have been presented in this application. In applicants' response filed 3/2/2010, and in spite of applicants' statement that duplicative claim 22 was canceled in a preliminary amendment, applicants have reinstated the previously canceled subject matter of the

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first claim numbered 22, and two claims numbered as 22 still appear in the current claim set. To correct this situation, Applicants' response should include the following:

(a) The original claim set included 30 claims (including two claims numbered as 22), and therefore the claims should be renumbered, beginning with the second claim originally numbered 22 and continuing through 29, as claims 23 through 30.

(b) The first claim numbered as 22 was canceled in the amendment filed 8/14/2006. This claim is canceled and may not be reinstated numbered as 22, and therefore it should be indicated in the claim listing as canceled.

(c) Any newly presented claims must be numbered beginning with 31.

Any response by applicants which fails to include the proper claim numbering may be returned to applicants as nonresponsive.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 2 and 15-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Chien et al. (US 6,177,377).

The reference discloses in Examples 51 and 52 ethylene polymerization using a catalyst combination comprising a bridged bis-indenyl zirconocene (capable of forming

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highly crystalline ethylene homopolymer), a palladium diimine (capable of chain walking and/or ethylene oligomerization/reincorporation to make branched polyethylene), and MAO, resulting in a branched block copolymer. The reference states that the process uses a crossover agent to transfer growing chains between the two catalysts (see col. 10, lines 13-18) and MAO, as well as triethylaluminum, is usable for this purpose (see col. 10, lines 18-28).

5. Claims 18 and 19 are objected to as being dependent upon a rejected base claim, but would be allowable over the prior art currently of record if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Roberto Rábago whose telephone number is (571) 272-1109. The examiner can normally be reached on Monday - Friday from 8:00 - 4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wu can be reached on (571) 272-1114. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Roberto Rábago/  
Primary Examiner  
Art Unit 1796

RR  
March 27, 2010